



Court Connection

The Newsletter of the
Western District of NC
Bankruptcy Court

The Chambers “Skinny”

by George Hodges & Craig Whitley, Bankruptcy Judges

In 2003 there were over 10,000 new bankruptcy cases filed in the Western District of North Carolina! While there is a certain sparkle to such a round five-digit number, there are a number of more significant aspects to this milestone:

- This is a new record for this district.
- It represents a 10% increase over the prior year (which was a previous record); the prior year was a 15% increase over the previous year (which was also a previous record);

et cetera.....

- This district has had no significant increase in personnel resources since 1987 when the second judgeship was added—at a time when annual filings totaled 2,393.

But, the most remarkable fact is not expressed in “statistics.” Notwithstanding the 11.8% increase in filings, there is neither a backlog of cases nor any delay in scheduling hearings. While technological innovations have contributed to this, it is largely the result of the work of the Bankruptcy Bar and the staff of the Clerk’s Office. For that, we are most grateful! The Bar and the clerk’s office staff all regularly demonstrate a collegiality and cooperative effort that has made it possible to handle our growing caseload both efficiently and effectively.

The level of advocacy in the Bar is quite high, with no rights being given away by any means. But, there is an absence of misrepresentation, dirty tricks, posturing, petty squabbling and the like. Those unprofessional tactics can sap energy, waste time and divert attention from real advocacy. The Bar of this district has demonstrated the ability to

compromise when in its best interest, and to litigate when necessary; in either case to focus on what is important and to marshal efforts on those points. All of this is regularly demonstrated in a professional manner, with a minimum of personal antipathy.

The staff of the Clerk’s Office has grown, not in numbers, but in knowledge and the ability to process more cases efficiently and to handle more complex work. With the inception of CM/ECF, much of the traditional “docketing” work is done in law offices and on the computer. At the same time, the work of the case administrators has become significantly more complex, particularly in troubleshooting and quality control. All the while, our court staff continues to deal professionally with the public and the Bar.

The statistical “Program Indicators” distributed by the Administrative Office of the U.S. Courts shows a great deal of improvement in 2003. While maintaining the highest percentage of asset cases in the Fourth Circuit, the speed of processing cases has improved dramatically. This is largely the result of the efforts of the Chapter 7 Trustees—and we congratulate (and thank) them for that effort. Further, the Chapter 13 statistics show that this district ranks very high in the percentage of Chapter 13 cases completed. Again, the Chapter 13 Trustees’ work plays a big part in that success.

So, take a few seconds to congratulate and thank yourselves. The public is the great beneficiary of your cooperative efforts, as is the court family. THANK YOU!

The Internet Credit Card is Coming!

by Alesia Wallace, Financial Specialist

Courts now have the option of accepting Internet credit card payments with Version 2.1 of the Bankruptcy Case Management/Electronic Case Files (CM/ECF) system. The benefits to ECF filers include:

- Paying filing fees with a credit card over the Internet at any time;
- Reviewing Internet credit card transaction payment history;

- Reviewing any outstanding payments due to the court.

In the near future, our court will join with 32 other bankruptcy courts that have Internet credit card capability. Please visit our website at www.ncwb.uscourts.gov for periodic updates.



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Clerk’s Report

by Gerri Crockett, Clerk of Court

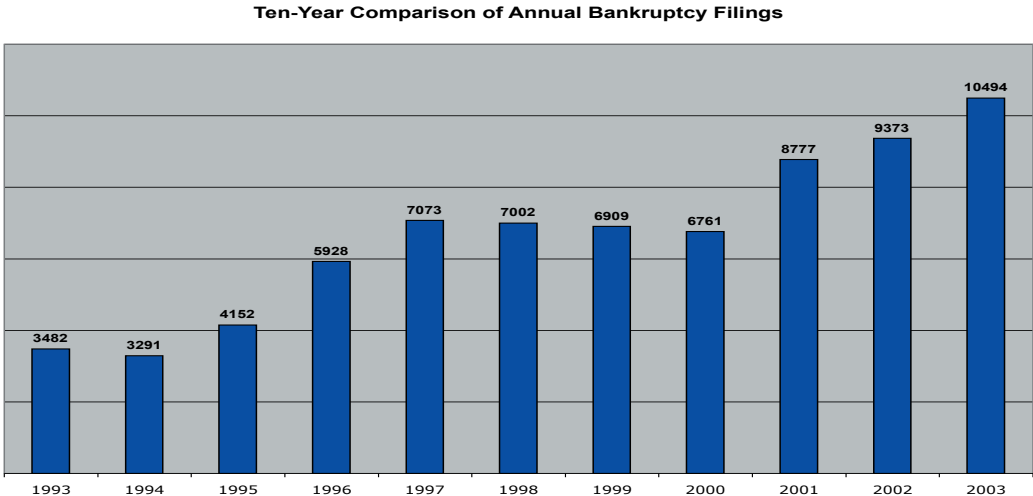
In reviewing a copy of a recent news release from the AO, I was interested to see how our court compared to other Bankruptcy Courts in the nation, as well as in our circuit. Overall, the filings nationwide increased an average of 5.2% from Calendar Year (CY) 2002 to CY 2003.

“In fact, only 9 other courts in the nation had a larger percentage increase.”

Our court’s filings increased by 11.8% - the highest in the 4th circuit - during the same time period. NC(E) and NC(M) increased only 5.3% and 7.3% respectively. In fact, only 9 other courts in the nation had a larger percentage increase.

In comparing Chapters, 71% of all filings nationwide are Chapter 7’s and only 28% are Chapter 13 cases. In our court, 53% of the filings were Chapter 7 cases and 46% were Chapter 13 cases.

As you know, we have been an extremely busy court!!!



Pete and Repeat

When a document is filed electronically, it is officially filed of record on the court docket. The Notice of Electronic Filing (NEF) received at the conclusion of the submission contains the ‘file stamp’, information on who was served via email, and a new document number for the entry.

Some attorneys have been printing a hard copy of the electronically filed document, printing the NEF and then mailing this to the court **after** it was already filed electronically!!! Please be advised that all documents received on paper are treated as completely **new** documents with different filed dates and unique document numbers even if the same document has already been filed electronically.



Training Tips

by Robin Cherkas & Robin Felts, Trainers

New Bankruptcy Form: Statement of SSN - Form B21

Effective December 1, 2003 the court required filing Form B21-Statement of SSN. While this new form is required nationwide, each court determines the logistics for filing Form B21. The Western District of North Carolina has chosen to allow attorneys to file this form electronically as a private, text-only entry, saving time by not requiring that the form be submitted in PDF file format.

Some general questions have arisen about this form and when it is (or perhaps is not) due. We hope the following FAQ will provide some assistance!

Question: I know that Form B21 is submitted to the court electronically as a private, text-only entry. What about the actual document itself? Should I keep that?

Answer: Yes, Form B21 is required to be maintained by the attorney in the same manner as all other debtor-signed documents, that is, for 4 years after the case closes. The court anticipates that when the attorney files the electronic, text-only Form B21, the original, signed Form B21 is in hand.

Question: In what way does the court use Form B21?

Answer: Under the new SSN Privacy Act, beginning 12/1/03, the voluntary petition reflects only the last 4 digits of the debtor's SSN. Therefore, the court cannot determine whether the full SSN received during case opening is correct.

The court compares the SSN received through manual or auto upload with the SSN entered by the attorney in the text of the Form B21 entry. If the numbers match, the case will continue to be processed in the usual manner.

Question: Can the court give out the full SSN when an inquiry is made from the public?

Answer: No. Additionally, the SSN displayed on the court's public terminal and on all reports accessible by attorneys is redacted to the last 4 digits. While the full SSN will display on the 341 Notice mailed by the court, the copy of that notice entered on the docket will be redacted to the last 4 digits.

Question: If a case converts after 12/1/03 is a Form B21 due?

Answer: No. This form is due only for new cases filed on or after 12/1/03.

Question: If a case splits after 12/1/03 is a Form B21 due?

Answer: No.

Question: Does a business debtor file Form B21?

Answer: No. Businesses are required to fully disclose the Tax ID Number on the voluntary petition. Form B21 is only for the privacy of an individual debtor's SSN.

Question: Where can I get a copy of this new form and read about all the requirements for filing it?

Answer: On the court's website: www.ncwb.uscourts.gov

Managing Your Email: Things to Consider

- Create an email account just for CM/ECF emails.
- Check your email system for filtering of keywords of the subject line.
- Send emails to a second or third address.
- Change from "Individual email Transactions " to "Daily Summary Report" or vice versa.
- Use the "Summary of ECF Activity" (Reports menu in CM/ECF) to help monitor and manage case activity easily.
- To change your email address, and other important information use the "Maintain Your ECF Account" (Utilities menu in CM/ECF).

CM/ECF & viruses

Please keep in mind that you will **NEVER** receive an email from **CM/ECF** that has an *attachment*. All automated emails from **CM/ECF** contain *links*.

With "Spoofing" viruses becoming more prevalent, make sure that you know the sender, and are expecting an attachment. If you do receive an email with an attachment, be especially wary of attachments ending in .zip, .exe, .com, .bat or .pif.



Lien Avoidance, Valuing and Attacking Liens and Certificates of Discharge

by George Hodges & Craig Whitley, Bankruptcy Judges

Recently, the court has encountered some confusion involving liens and the debtor's discharge. Without rehashing a lot of history, here is the proper way to handle several aspects of lien avoidance and the effect of the debtor's discharge:

Lien Avoidance: Avoidance of a lien that impairs the debtor's exemptions may be accomplished by motion. 11 U.S.C. 522(f) and Bankruptcy Rule 4003(d). An adversary proceeding is not necessary for this purpose. The lien avoidance is effective upon the issuance of the debtor's discharge. The motion to avoid a lien pursuant to Sec. 522(f) should identify specifically the lien creditor, the lien itself and the property subject to the lien. The motion can be included in the Chapter 13 Plan. See, Local Form 4. Or, the relief may be sought by motion filed anytime prior to case closing. The motion may be made "no-protest" pursuant to the court's hearing notice procedure. See, Local Rule 9013-1 (e) (5). The proposed Order tendered should specify that the lien avoidance is "effective upon issuance of the discharge."

Valuation of the Lien: The court can determine the value of a claim secured by a lien on property by a motion. Bankruptcy Rule 3012. Note: There are limitations on a Chapter 7 debtor's right to "smoothdown" the value of property he intends to keep, pursuant to Dewsnup.

Attacking the Lien: Attacks on the validity, priority

or extent of a lien must be made by adversary proceeding. Bankruptcy Rule 7001(2). A partial exception to this principle is that some rights of secured creditors can be modified by a Plan of Reorganization. See, 11 U.S.C. 1123(a)(5) and 1322(b)(2).

Certificates of Discharge: The court no longer executes "certificates of discharge" in the form that it once did. The court discontinued its prior practice because it was misunderstood and misused. The court will now execute a "certificate of discharge" that states only that the bankruptcy case was filed and that the discharge was entered on their respective dates. Other procedures are equally effective to put the public (or a particular creditor) on notice of the debtor's discharge—such as filing the discharge with the state court. The Certificate of Discharge was never intended to be effective to cause cancellation of a judgment or lien (although that was one of its misuses). A court Order or Judgment that a certain debt is discharged is required for that in any event.

Timing of Relief: All motions and adversaries seeking to affect a lien must be filed prior to case closing. When the relief is desired after case closing, the debtor must file a motion to reopen the case, notice a hearing pursuant to the court's "no protest" procedure (and proposed order) pursuant to 11 U.S.C. 350(b), and tender the reopening fee set by 28 U.S.C 1930.

New NCWB Employees !!!

Malaka Williams - Case Administrator
Originally from Kinston, NC, she enjoys reading, cooking and traveling.



Chelsea Worth - Case Administrator
Will start on 04.05.04, bringing more paralegal experience to the Bankruptcy Court.



Amy La - Case Administrator
Joins the NCWB team with a BA from Rutgers University, and paralegal experience.



Liz Steffey - Courtroom Deputy
Leaves a strong background in the field of personal injury litigation to join our Case Administrators.



Kim Maltez - Case Administrator
Relocated from Tampa, FL where she worked ten (10) years with the Middle District of Florida's Bankruptcy Court. She enjoys the visual arts, writing and Dragon-ball cartoons.